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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


Proceeding	91222870
Party	Defendant NT Partners LLC
Correspondence Address	KAROL A. KEPCHAR AKIN GUMP STRAUSS HAUER & FELD LLP 1333 NEW HAMPSHIRE AVE. NW WASHINGTON, DC 20036-1564 UNITED STATES kkepchar@akingump.com, dc_ipdocketing@akingump.com
Submission	Answer
Filer's Name	Karol A. Kepchar
Filer's e-mail	kkepchar@akingump.com, dc_ipdocketing@akingump.com, sahuja@akingump.com
Signature	/kakepchar/
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Attachments	NT Answer.pdf(28669 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OluKai, LLC,	)	
	)	
Opposer,	)	Opposition No. 91222870
	)	
v.	)	
	)	
NT Partners LLC,	)	
	)	
Applicant.	)	
	)	

**APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION**


Applicant, NT Partners LLC (“Applicant”), by its undersigned counsel, answers the Notice of

Opposition of OluKai, LLC (“Opposer”) regarding the mark  (U.S. App. Ser. No. 86/381,166) (“Applicant’s Mark”), as follows:

1. Answering Paragraph 1 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, and therefore denies the same.
2. Answering Paragraph 2 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore denies the same.
3. Answering Paragraph 3 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3, and therefore denies the same.

4. Answering Paragraph 4 of the Notice, Applicant admits only that, according to the U.S. Patent & Trademark Office (“USPTO”) TSDR records, Registration Nos. 3163969, 3422573, 3426168, 3441978, 3544582, 3626900 and 4002659 were issued by the USPTO and list Opposer as current owner of the registration. These TSDR registration records speak for themselves. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 4, and therefore denies the same.
5. Answering Paragraph 5 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5, and therefore denies the same.
6. Answering Paragraph 6 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and therefore denies the same.
7. Answering Paragraph 7 of the Notice, Applicant expressly denies that the alleged “Hook Mark” has not been abandoned by Opposer for each and every type of goods pleaded by Opposer in the Notice of Opposition. Further, Paragraph 7 contains legal conclusions to which no answer is required. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 7, and therefore denies the same.
8. Answering Paragraph 8 of the Notice, Applicant denies that Opposer’s alleged “Hook Mark” has been used prior to Applicant’s adoption of its mark for each and every type of goods pleaded by Opposer. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 8, and therefore denies

the same.

9. Answering Paragraph 9 of the Notice, Applicant admits only that Applicant filed on August 29, 2014 an application in the USPTO, Serial No. 86/381166, to register the mark , for the goods and services of “clothing and headgear, namely, t-shirts, shirts, polos, shorts, bathing trunks, swimsuits, jackets, hoodies, hats, visors, and skull caps,” which application was found by the U.S. Patent and Trademark Office to be entitled to registration and was published for opposition. Applicant expressly denies that registration of Applicant’s Mark in connection with the described services will damage Opposer.
10. Answering Paragraph 10 of the Notice, Applicant admits only that Application No. 86/381166, to register Applicant’s Mark recites as the goods “clothing and headgear, namely, t-shirts, shirts, polos, shorts, bathing trunks, swimsuits, jackets, hoodies, hats, visors, and skull caps,” goods classified administratively by the U.S. Patent and Trademark Office in International Class 025.
11. Answering Paragraph 11 of the Notice, Applicant admits only that Applicant’s Application No. 86/381166 claims a date of first use of Applicant’s mark in commerce of May 31, 2010.
12. Answering Paragraph 12 of the Notice, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and therefore denies the same.
13. Answering Paragraph 13 of the Notice, Applicant admits only that Application No. 86/381166 was filed on August 29, 2014. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in

Paragraph 13, and therefore denies the same.

14. Denied.

15. Answering Paragraph 15 of the Notice, Applicant admits only that Applicant's mark comprises a design of a fishing hook positioned on a substantially rectangular contrasting border. Applicant denies the remainder of the allegations of Paragraph 15 of the Notice.

16. Denied.

### **FIRST AFFIRMATIVE DEFENSE**

Opposer has failed to state a claim upon which relief can be granted. Specifically, Opposer makes broad, conclusory statements and has failed to plead sufficient facts to support its allegations of ownership, priority of use and likelihood of confusion with respect to each and every mark for each of the goods set forth in the registrations pleaded by Opposer in this opposition.

### **SECOND AFFIRMATIVE DEFENSE**

Third party use of similar marks in connection with footwear and other goods substantially similar or commercially related to those for which Opposer's pleaded marks are registered has rendered Opposer's pleaded marks not susceptible to a scope of protection that would preclude registration of Applicant's Mark for its goods.

### **THIRD AFFIRMATIVE DEFENSE**

Applicant's use of Applicant's Mark is not likely to cause confusion, mistake or deception as to the source or sponsorship of Applicant's goods or as to affiliation between the parties with respect to each of Opposer's pleaded marks.

#### **FOURTH AFFIRMATIVE DEFENSE**

Applicant's claims are barred by the equitable doctrines of waiver, acquiescence, laches and/or estoppel. Applicant has used its subject mark continuously for more than five years without confusion.

WHEREFORE, Applicant requests that Opposition No. 91222870 be dismissed with prejudice, and that a registration issue to Applicant for the mark of Application Serial No. 86/381,166.

Respectfully submitted,

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

/s/ /Karol A. Kepchar/

Karol A. Kepchar

Sumedha Ahuja

1333 New Hampshire Ave. NW

Washington, DC 20036

202-887-4104

202-887-4288

Date: December 28, 2015

ATTORNEYS FOR APPLICANT

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Applicant's Answer to the Notice of Opposition was served via email per agreement of counsel on the following:

B. Anna McCoy  
Alleman Hall McCoy Russell & Tuttle LLP  
806 SW Broadway, Suite 600  
Portland, OR 97205

anna@ahmrt.com

Dated: December 28, 2015

By: /s/ /Karol A. Kepchar, Esq./